Las Vegas Sands, Inc., d/b/a Sands Hotel and Casino *and* International Brotherhood of Painters and Allied Trades Union, Local 159, AFL–CIO *and* International Brotherhood of Electrical Workers, Local 357, AFL–CIO *and* Silver State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, Local 1780, AFL–CIO. Cases 28–CA–13583, 28–CA–13742–2, 28–CA–13594, 28–CA–13635, and 28–CA–13742–1

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On July 2, 1997, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Las Vegas Sands, Inc., d/b/a Sands Hotel and Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We agree with the judge, in the circumstances described by him and in the absence of contrary argument from either the General Counsel or the Charging Parties, that it is no longer necessary to order the Respondent to furnish the information that it unlawfully refused to provide.

Scott Feldman, Esq., for the General Counsel.
Howard E. Cole, Esq. (Lionel, Sawyer & Collins) and *Paul Roberts, Esq.*, of Las Vegas, Nevada, for the Respondent.
Hope Singer, Esq. (Bush & Geffner), of Burbank, California, for Charging Parties International Brotherhood of Painters & Allied Trades Union, Local 159, AFL–CIO and Silver State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, Local 1780, AFL–CIO.
Dalton L. Hooks, of Las Vegas, Nevada, for Charging Party International Brotherhood of Electrical Workers, Local 357, AFL–CIO.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charge in Case 28–CA–13583 was filed by International Brotherhood of Painters & Allied Trades Union, Local 159, AFL–CIO (the Painters Union), on March 5, 1996. The unfair labor practice charge in Case 28–CA–13594 was filed by International Brotherhood of Electrical Workers, Local 357, AFL–CIO (the Electrical Workers Union), on March 8, 1996. The unfair labor practice charge in Case 28–CA–13635 was filed by Silver State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, Local 1780, AFL–CIO (the Carpenters Union), on April 3, 1996. Based on the unfair labor practice charges, on April 29, 1996, the Acting Regional Director for Region 28 of the National Labor Relations Board (the Board) issued a consolidated complaint (CC-1) alleging that Las Vegas Sands, Inc., d/b/a Sands Hotel and Casino (Respondent) had engaged in, and was engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). On June 3, 1996, the unfair labor practice charge in Case 28–CA–13742–1 was filed by the Carpenters Union and the unfair labor practice charge in Case 28–CA–13742–2 was filed by the Painters Union. Based on the unfair labor practice charges, on July 10, 1996, the Acting Regional Director for Region 28 of the Board issued a consolidated complaint (CC-2) alleging that Respondent had engaged in, and was engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. The above matters were consolidated for hearing, and a trial, before me, was held on October 31 and November 1, 1996, and February 13 and 14, 1997, in Las Vegas, Nevada. At the trial, all parties were afforded the opportunity to call witnesses, to examine and cross-examine each witness, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. Counsel for all the parties filed such posthearing briefs, and these have been carefully considered. Accordingly, based on the entire record here, including my observation of the testimonial demeanor of each of the several witnesses and the posthearing briefs, I issue the following

FINDINGS OF FACT

I. JURISDICTION

At all times material here until on or about June 30, 1996, Respondent, a State of Nevada corporation, maintained an office and place of business in Las Vegas, Nevada, where it was engaged in the hospitality and gaming business. During the 12-month periods immediately preceding the issuance of the instant consolidated complaints, in the normal course and conduct of its above-described business affairs, Respondent derived gross revenues in excess of $500,000 and purchased and received goods and materials valued in excess of $50,000, directly from sources located outside the State of Nevada. Respondent admits that has been, at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

Respondent admits that the Painters Union, the Electrical Workers Union, and the Carpenters Union are each labor organizations within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The first consolidated complaint alleges that the Painters Union, the Carpenters Union, and the Electrical Workers Union each represents an appropriate unit of Respondent's employees; that during the fall of 1995, each labor organization reached complete agreement on the terms and conditions of employment of a successor collective-bargaining agreement, covering the bargaining unit employees, which it represents; that each labor organization requested that Respondent execute a written collective-bargaining agreement, memorializing the terms of its successor collective-bargaining agreement; and that Respondent failed and refused to execute the collective-bargaining agreements in violation of Section 8(a)(1) and (5) of the Act. Respondent denies that it engaged in the alleged unfair labor practices and contends that its bargaining representatives' agreement with each labor organization was merely tentative, conditioned on the approval of its highest management official; that each labor organization was aware of such a condition; and that, as such approval was not given, Respondent was under no obligation to execute memorialized versions of each of the tentative agreements. The second consolidated complaint alleges that the Painters Union and the Carpenters Union each requested information, which was necessary and relevant for purposes of ''effects'' collective bargaining and for each labor organization's performance of its representational duties, and that Respondent engaged in acts and conduct violative of Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the information to each labor organization. Respondent denies the commission of the alleged unfair labor practices, asserting that the General Counsel failed to meet its burden of establishing that the requested information was relevant and necessary for the purpose of ''effects'' bargaining.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Respondent's refusals to execute the agreements

The record establishes that, until June 30, 1996, Respondent, a state of Nevada corporation, operated a hotel and gaming facility on what is known as the ''strip'' section of Las Vegas Boulevard in Las Vegas, Nevada; that, since 1988, Respondent has been wholly owned by an entity, known as the Interface Group, which has its offices in Needham, Massachusetts; and that the controlling interest in the Interface Group is owned by Sheldon Adelson. At all times material, Arthur Waltzman was Respondent's chief financial officer;[1] Bill Champion acted as a consultant to Respondent's human resources department; and Paul Roberts has been Respondent's general counsel. The record further establishes that, in 1995, several of the collective-bargaining agreements, between Respondent and labor organizations, which represent various of its employees, expired; that Respondent entered into negotiations with each of these labor organizations for successor agreements; and that among the labor organizations, whose collective-bargaining agreements with Respondent expired in 1995 and with whom Respondent entered into negotiations for successor agreements that year, were the Painters Union, which is the bargaining representative for Respondent's painters, paperhangers, taper-finishers, and combination craftsmen, the Electrical Workers Union, which is the bargaining representative for Respondent's electrician foremen, journeymen electricians, and relief electricians, and the Carpenters Union, which is the bargaining representative for Respondent's journeymen carpenters and carpenter foremen. With regard to the 1995 bargaining between these three labor organizations and Respondent, while there is no dispute that each negotiation resulted in an agreement on all terms and conditions of a collective-bargaining agreement, the General Counsel contends that the agreements were final and Respondent contends that the agreements were tentative, conditioned on ratification by the members of each labor organization and on approval by Sheldon Adelson and his attorneys.

The record reveals that, on the expiration of their most recent collective-bargaining agreement, the Electrical Workers Union, which has had an ongoing collective-bargaining relationship with Respondent for, at least, 20 years, and Respondent met on just three occasions, in 1995, in order to negotiate a successor agreement. According to Dalton Hooks, the business manager and financial secretary of the Electrical Workers Union, during the bargaining, he was the chief spokesperson for the labor organization and Waltzman, Champion, and Marcie Yarnell, who was a secretary in the human resources department and a note-taker and observer during the bargaining, represented Respondent. He testified that, at the initial session, on June 27, ''Mr. Arthur Waltzman told us that Bill Champion would be the lead negotiator, except that he would do all economic issues . . . and he had full authority for negotiating, Mr. Waltzman''[2] and that, on behalf of Respondent, Waltzman agreed to and executed an agreement, in which Respondent agreed to extend the life of the parties' most recent agreement while the successor agreement negotiations continued and to pay retroactive wage increases upon completion of the negotiations. According to Hooks, at the parties' next negotiating session, held on September 6, bargaining concerned future expansion of the facility, and, while Respondent's decision to expand was definite, its plans were ''quite sketchy.'' Thus, ''there was discussion on whether or not the hotel was going to build a new tower on existing property or whether it was going to be an addition to that . . . property . . . and this was a concern of Waltzman especially about economics . . . . he needed . . . to make sure he had enough capitol and he needed the unions to help in their proposals to have the funds he needed.'' On this same topic there was discussion about the Electrical Workers Union's bargaining rights

[1] Waltzman passed away subsequent to the circumstances surrounding the alleged unfair labor practices and prior to the hearing.

[2] During cross-examination, upon being confronted with his pretrial affidavit, in which he testified that Champion stated that he would have to have Waltzman's approval for Respondent's position of contract issues and in which there is no mention of Waltzman's attendance at this bargaining session, Hooks averred that Champion made such a statement prior to Waltzman's arrival for the meeting and that the latter did, in fact, make the statement, attributed to him by the witness.

in a new building, constructed on Respondent's current or adjacent property.

The parties' final bargaining session was held on September 11. According to Hooks, Champion presented a draft memorandum of agreement (MOA) to the labor organization. The proposal included a new recognition clause provision, stating that the successor agreement would not be applicable to another facility built on the grounds on which the present hotel and casino stood, and a new side letter, stating that, in the event Respondent constructed a new tower, which became ''an integral part of the existing operations,'' bargaining unit employees would be employed to perform bargaining unit work in the tower. Hooks testified that the discussion centered on the language of the afore-mentioned side letter and the Electrical Workers Union's retention of bargaining rights. ''We took a look at it, made some changes and left it in [Champion's] office, and shook hands with Mr. Waltzman and Mr. Champion and we came to agreement.'' Specifically, ''Arthur Waltzman and I shook hands and he says we have a deal, we're looking forward to continuing relationships.'' With regard to Waltzman's authority to reach a final agreement, Hooks specifically denied ever having been told during the bargaining that an agreement, at the bargaining table, had to be ratified or approved by Sheldon Adelson or anyone in Boston.

The Electrical Workers Union bargaining unit shop steward, James Springgate, also testified with regard to his labor organization's 1995 negotiations with Respondent. Contrary to Dalton Hooks, as to who would be responsible for negotiating on behalf of Respondent, he recalled that, at the first bargaining session, it was Respondent's head of maintenance, Frank Vignola, who stated ''that economics would be taken care of by Arthur and the rest of the package would be passed out by . . . Mr. Champion.'' Corroborating Hooks, Springgate recalled that, at the second bargaining session, Waltzman discussed expansion of the hotel and mentioned alternatives, including ''adding high rise hotel facilities to the existing casino'' and ''buying the strip adjacent property . . . and putting up a totally separate hotel with perhaps partners'' and that, at the final bargaining session, after the parties reached agreement on wages, Hooks announced ''we're in agreement on all the articles . . . and we would accept this contract'' and Waltzman replied that ''we have a deal'' and reached across the table, shaking hands with each of the Electrical Workers Union representatives. As did Hooks, Springgate denied that any management representative said anything about Adelson or Boston having to approve the parties' agreement.

There is no dispute that Respondent was on notice that the bargaining unit employees, represented by the Electrical Workers Union, would have to ratify the negotiators' agreement on the terms of the successor collective-bargaining agreement, and, subsequent to the final bargaining session, the employees did so. Shortly thereafter, Hooks took a memorialized printed version of the parties' agreement to Respondent's human resources department and, later, spoke with Champion and Yarnell several times during November and December, asking why Respondent had not as yet executed it. Ultimately, Champion informed him that the contract was in Waltzman's office but that the latter was ill and unable to sign it. Concerned about Respondent's failure to execute the agreement, in January or February 1996, Hooks telephoned Paul Roberts, Respondent's general counsel, who ''informed me that there was a problem with the length of the agreement, and I asked him why. . . . I told him that we came to agreement and . . . Arthur Waltzman had agreed to it, and he says . . . [Waltzman] didn't have authority. And I says . . . we always were told he had the authority by himself and I assume Bill Champion.''[3] Finally, there is no dispute that Respondent has never executed the 1995 Electrical Workers Union MOA and that Respondent has failed and refused to implement any of the terms and conditions of employment, which are embodied in the agreement, including the payment of retroactive wage increases.

Respondent's respective existing collective-bargaining agreements with the Carpenters Union and the Painters Union also expired in 1995. Inasmuch as both contracts contained ''similar'' terms and conditions of employment, Respondent's successor agreement bargaining with both labor organizations was conducted jointly. Representing the Carpenters Union, during the negotiations, were Bill Hutchinson, a business representative of the Silver State District Council of Carpenters, Aubrey Rueff, the shop steward, and the executive secretary of the labor organization; representing the Painters Union were Jerry Kmetz, the business representative and financial secretary of the labor organization, and its shop steward; and representing Respondent were Champion and Yarnell.[4] The parties' initial bargaining session was held on September 19.[5] Jerry Kmetz was unable to recall any discussion about the ''ground rules'' for the bargaining during this meeting, and, while likewise unable to recall what was said, Aubrey Rueff vaguely thought Champion mentioned that ''we were going to negotiate . . . and . . . there was no final authority either way.'' The parties next meeting occurred on October 3 and, according to Kmetz, as with the Electrical Workers Union negotiations, there was discussion about hotel expansion plans and discussion on contract language, proposed by Respondent, concerning whether Respondent's recognition of each labor organization's status as the bargaining representative and the collective-bargaining agreements themselves would apply to construction on Respondent's existing property and on new property. In this re-

[3] Hooks testified that, during the negotiations for the predecessor collective-bargaining agreement, Waltzman had identified himself as the individual, who could ''put the finality'' to the agreement'' and had signed it.

During cross-examination, Hooks denied being told by Roberts that his people had assured him that the labor organization had been informed of the need for approval by Adelson. However, he was confronted by his pretrial affidavit in which he swore that Roberts made such a statement during their telephone conversation.

[4] As Champion stated, Waltzman appeared only at sessions during which financial issues were discussed.

[5] According to Bill Hutchinson, a business representative for the Silver State District Council of Carpenters, shortly after the Carpenters sent a reopened letter to Respondent in March, he met with Champion at the latter's office in the Sands Hotel. Hutchinson's testimony was uncontroverted that Champion expressed a desire to commence bargaining after the labor organization completed bargaining with other Las Vegas hotels so that he would be aware of the industry positions on various subjects. He added that Respondent also had ''some special needs;'' that ''he would be negotiating the non-economic issues . . . that the economics would be Mr. Waltzman's and that . . . final approval of everything would come from Mr. Waltzman.''

gard, he added, Respondent proposed a side letter to the collective-bargaining agreement, which would cover contingencies and representation rights. Carpenters Union Shop Steward Rueff also recalled that there was a discussion as to Respondent's expansion plans at this meeting; however, Bill Hutchinson recalled that this occurred at the parties' next bargaining session on October 17. According to him, what was discussed was the possible razing of Respondent's existing facility and the construction of a new hotel and the labor organizations' bargaining rights in such an event. As to this, Respondent proposed new recognition clause language and a side letter, modifying the language.

During direct examination, Jerry Kmetz recalled that the final bargaining session between the Painters Union and Respondent occurred on October 31; however, during cross-examination, he conceded ''it's a good possibility'' the meeting occurred eight days earlier—on October 23.[6] According to Kmetz, at the parties' prior bargaining session, Waltzman had been present, and a wage increase, vacations, and the new contract's term were discussed. As to the latter topic, Waltzman said he could only agree to 4 years, and, at the start of the final session, Champion presented an MOA to Kmetz ''with the changes . . . that we had talked about . . . [with] the percentages split up for the four years. . . . I went through the proposal that he handed me and I agreed with everything that was in the proposal. . . . I was told to take the . . . proposal and get it ratified . . . .'' Asked to specify how the meeting ended, Kmetz recalled that ''I probably shook hands with [Champion] . . . .'' Subsequently, Kmetz testified, Respondent's painters bargaining unit employees ratified the agreement, and he returned a signed copy of the MOA to Yarnell in Respondent's human resources department office. Thereafter, after being informed several times by Yarnell and Champion that they did not know when the contract would be executed by Respondent,[7] the latter referred the Painters Union official to Paul Roberts, who informed the former that the MOA had not been executed as Respondent wanted to change the wording of the side letter and wanted to change the term of the agreement so that it would expire in 1997. He added, ''[Y]ou know this has to be approved up here.'' Kmetz responded that language to that effect should have been included in the MOA. There is no dispute that, at all times material, Respondent has failed and refused to execute the 1995 Painters Union MOA and that it has failed and refused to implement any of the terms and conditions of employment, which are embodied in said agreement, including the payment of retroactive wage increases.

Kmetz specifically denied that Champion ever said anything about what Respondent would have to do if the bargaining unit employees ratified the parties' agreement. On the contrary, he believed that Waltzman and Champion had authority to sign off on a new collective-bargaining agreement. ''The only statement was made . . . during the bargaining from Mr. Champion . . . that everything will be sent to Boston to be signed, which . . . wasn't a problem with me . . . . He told me these documents would be signed in Boston, but he said nothing about them being approved or ratified in Boston.'' Finally, he viewed what Roberts subsequently told him as fundamentally differing from what Champion had previously told him with regard to Waltzman's and Champion's bargaining authority.

The last formal bargaining session between the Carpenters Union and Respondent occurred on October 31. According to Bill Hutchinson, Champion presented another draft MOA but not with ''everything we asked for.'' He finally told the union representatives that the offer was the best Respondent could offer and, after a caucus, Hutchinson said that it was acceptable to him and that he would take the offer to the bargaining unit employees for ratification. Later that day, he did so, but the employees rejected the proposed agreement. Hutchinson informed Champion of the rejection of the contract and requested a meeting with Waltzman. Such a meeting was arranged and held at the end of November in Champion's office. Hutchinson testified that Waltzman listened as he explained why his members deserved a better monetary offer and then replied, ''We made a deal, now its up to you. Go sell it to the men or . . . go on strike.'' Thereupon, the Carpenters Union representatives departed; Hutchinson met with the bargaining unit employees; and the latter ratified the agreement. Hutchinson then delivered a signed copy of the MOA to Champion's office, ''and he said he would take it to Arthur to get it signed.''

With regard to what occurred on October 31 and thereafter, Aubrey Rueff testified that, on the above date, the Carpenters Union representatives completed bargaining on language matters with Champion and, after a short while, negotiated with Waltzman on economics, including wages. ''And the proposal was three percent per year for a 4-year contract. And we got everything straightened out.'' However, according to Rueff, the bargaining unit employees rejected the agreement and, a week later, he and Hutchinson again met with Waltzman. Hutchinson told Waltzman that the employees wanted him to give them more money as they had always helped Respondent when required. Waltzman expressed surprise as he believed an agreement had been reached at the prior meeting. He said ''that's all we can do'' and explained why. Thereupon, ''as Bill and I were walking out, we shook hands with Mr. Waltzman and says we've got a deal.''

Both Hutchinson and Rueff specifically denied that, at any time during the bargaining, any Respondent representative said that the parties' agreement required approval by Adelson or in Boston. Further, Hutchinson testified that when he gave Champion the signed MOA after ratification by the bargaining unit employees, the latter said nothing about getting approval by headquarters, by Adelson, or by Boston.[8] Further, while offering no testimony that anything was said on this point, Hutchinson averred, ''I think every [MOA] is subject to review after the contract document is prepared, the attorneys always review it to make sure that I'm not going to put something in there that wasn't agreed [to]. Review it for accuracy. . . . But nothing to do with approving it.'' Rueff,

[6] The only Carpenters Union representative present was shop steward Rueff.

[7] Pursuant to Champion's instructions, after receipt of the signed MOA from the Painters Union, Yarnell prepared a memorandum to Respondent's payroll supervisor, Barbara Benassi, detailing the changes in the painters bargaining unit employees' terms and conditions of employment. Champion denied that the document was ever sent to Benassi.

[8] In fact, Hutchinson testified, he had been specifically informed by Champion prior to formal bargaining that ''Arthur Waltzman had approval on the agreement.''

however, did recall something said in this regard: ''All I can recall was that there would be a final write up and just a check over wording.''[9] Finally, there is no dispute that, at all times material, Respondent has failed and refused to execute the 1995 Carpenters Union MOA and that Respondent has failed to implement any of the terms and conditions of employment, which are embodied in the agreement, including the payment of retroactive wage increases.

Contrary to the foregoing testimony, Respondent presented a different version as to whether the three labor organizations were informed of any limitation on Respondent's representatives' authority to conclude a final agreement. Thus, Marcie Yarnell testified that she was present during each of the 1995 bargaining sessions, between Respondent and the Electrical Workers Union, and that, perhaps ''in the middle'' but definitely ''at the end,'' either Waltzman or Champion said, ''[J]ust as you have to have the contract ratified by your members, we need it approved by our counsel in Boston.'' With regard to the Carpenters Union and Painters Union negotiations, she recalled that these were conducted jointly at the outset but separately at the end; that, as to the bargaining with the former, while not recalling how many times, either Waltzman or Champion or both told the labor organization, ''just as your members have to ratify tentative agreement, our counsel in Boston has to''; and that, as to the Painters Union, ''the same statement that was said in the other one . . . that just as your members have to ratify the tentative agreement, our counsel in Boston has to . . . go over it and approve it also.'' During cross-examination, Yarnell testified that Waltzman's or Champion's statement, regarding the extent of their authority to bind Respondent, was made to the Electrical Workers Union negotiators during the last bargaining session ''when they had reached tentative agreement and they were shaking hands and talking about taking back to the union for ratification.'' Asked if such was uttered earlier in the negotiations, Yarnell could not recall if it was stated more than once and averred ''they kind of all flow together in my mind.'' Also, during cross-examination, with regard to when the comment was made to the Painters Union and the Carpenters Union negotiators, Yarnell stated it was not said while the bargaining was conducted jointly; that it was said to the Painters Union at ''definitely the last [session]''; and that Waltzman made the comment to the Carpenters Union representatives in the context of Hutchinson saying he had to take the parties' agreement to the members for ratification. Further, during cross-examination, Yarnell gave a different version of what was said to the labor organizations ''when it came close to reaching tentative agreement and it was discussed that it needed to be ratified by the members''—''our attorneys need to look it over and final approval needs to come from Boston.'' Finally, Yarnell conceded that, while, in her bargaining notes for each negotiating session with each labor organization, she recorded anything ''I felt . . . was important for future reference,'' nowhere, in said notes, is there any indication of either Waltzman or Champion ever informing representatives of the Electrical Workers Union, the Carpenters Union, or the Painters Union that any agreements reached were subject to approval by Adelson or Respondent's attorneys.

Bill Champion testified that he became a consultant to Respondent in 1994 while negotiations with the Stage Hands Union and the Culinary Workers Union were ongoing. Prior to negotiating with each of the labor organizations, including the three Charging Parties, the Teamsters Union, and the Operating Engineers Union, whose collective-bargaining agreements with Respondent expired in 1995, he and Waltzman ''decided that I would start them off and handle the language portions. When we got . . . into the economics then he would come in and talk economics.'' As to their bargaining authority, Champion stated, ''My authority came from continuous review with Waltzman and his authority came from continuous review with Interface.'' Asked if he or Waltzman ever told representatives of the labor organizations that they had final authority to bargain, Champion answered, ''No. The answer is no. I could see that it was obvious that we didn't.'' A moment later after being asked to explain why such was obvious, Champion stated, ''I thought it was obvious to them because I told them it was.'' On this point, he explained that, at the commencement of each set of negotiations, he expressed the following ''litany''—''I will talk with you about language. . . . I will make a proposal to you. After that's over Mr. Waltzman will talk to you about money and Mr. Waltzman has to run anything that he does by Interface.''[10] Besides at the start of bargaining, Champion repeated the latter comment ''when Waltzman struck a tentative agreement with respect to wages, I reminded the unions that as they had to get ratification from their members, that the Sands had to get ratification from Boston. They had to run it by the attorneys in Boston . . . is what I said.''[11]

Respondent's general counsel, Paul Roberts, testified that, while having no personal knowledge of what may have been said at the bargaining table, he did speak to Waltzman during Respondent's negotiations with the Operating Engineers Union with regard to communicating his bargaining authority. ''I reminded Mr. Waltzman that it was Mr. Adelson's very strong insistence that the limited authority with which [he and Champion] had been given be communicated to the unions. . . . He responded that he understood, sort of a casual response . . . sure, sure . . . we're doing that.'' Roberts also testified to different versions of his conversations with Dalton Hooks and Jerry Kmetz. With regard to the latter, Roberts recalled Kmetz inquiring only as to the status of his

[9] As with the Painters Union, after completing negotiations with the Carpenters Union, Champion instructed Yarnell to prepare a memorandum on implementing the changes in the bargaining unit employees' terms and conditions of employment but denied that such was ever sent to Barbara Benassi.

[10] While Respondent argues that such was meant to convey that, at the conclusion of bargaining, any agreement was tentative until approved by Sheldon Adelson and his attorneys, such is not entirely clear. Thus, while he negotiated, ''I was discussing [progress with regard to language] at all time'' with Waltzman and he ''was keeping . . . Interface appraised of what was happening.'' That Sheldon Adelson was asked to approve what was being offered to labor organizations at every stage of negotiations is clear from R. Exhs. 3 and 4, which concern 1992 negotiations.

[11] While stating that this review was a substantive one inasmuch as the 1995 negotiations involved new recognition clause language, a ''sensitive'' subject for Interface, he conceded never explaining what the prior approval by Boston would entail—''I just said it had to be reviewed and the same as you've got to have it ratified by your members.''

(Roberts) review of the parties' agreement and evincing no surprise as to the review by Adelson. Hooks, according to Roberts, did seem ''upset'' with the latter's substantive review of the agreement and said that the parties had made a deal at the table and that he viewed Adelson's approval as a mere formality. To this, Roberts responded that the negotiators did not have final and binding authority and that he understood this had been communicated to Hooks. Roberts testified that Hooks' assertion prompted him to speak to Waltzman—''I had a very specific conversation with Mr. Waltzman after that . . . . he repeated again to me that [the unions] had absolutely been told . . . that whatever was decided . . . would be subject to final approval . . . [in] Boston.''

Representatives of the Stage Hands Union, the Teamsters Union, and the Operating Engineers Union each testified with regard to his labor organization's 1994–1995 contract negotiations with Respondent and particularly with regard to whether, at any time during the 1995 bargaining, either Waltzman or Champion or both ever discussed his authority to negotiate a final agreement. The only one of the above corroborating any aspect of Respondent's position was Brian Reive, a business representative for the Operating Engineers Union. Although he was not the chief spokesperson for his labor organization, Reive participated in the 1995 successor contract negotiations, and, he testified, Champion was the primary spokesperson for Respondent and Waltzman appeared for parts of two meetings ''over the economics . . . . just talked about the economic conditions of the propert[y] . . . .'' According to the witness, at ''the final meeting, where he reached a tentative agreement, Bill Champion [stated] . . . that . . . the tentative agreement we had reached . . . was subject to the approval of the Board of Directors and ownership of the Sands Hotel, but he felt there would be no problem with that. . . . from my side of the table the statement was also made, it was also subject to approval and ratification of the membership.'' During cross-examination, Reive testified that, rather than Waltzman, Champion bargained with the labor organization over monetary matters, and Waltzman ''came in and talked of . . . economic conditions and the general ability of the hotel to make money . . . .'' During redirect examination, Reive recalled that Waltzman made a similar comment to that of Champion during his second appearance in the bargaining; he was ''crying poor and he said that anything we did at this bargaining table would be subject to final ownership approval.''

Testifying contrary to Reive was Dennis Kist, an attorney, who acted as president of Stage Hands Local 7207, which was engaged in negotiations for a successor collective-bargaining agreement with Respondent in early 1995. According to Kist, a significant problem during the bargaining was the labor organization's insistence on a ''neutrality'' clause, requiring Respondent to be neutral in the labor organization's organizing efforts at any new hotel, which might be opened by the former. Kist testified that Waltzman told him that inclusion of such a clause in the parties' collective-bargaining agreement would require approval from Boston, particularly from Sheldon Adelson, a comment echoed by Respondent's attorney whenever bargaining turned to the above clause. However, Kist added, ''they never said that the whole—from the beginning they didn't preface it by saying that it had to be approved by Boston . . . .'' Likewise, contrary to Respondent's witnesses, Steve Burrus, the secretary/treasurer of Teamsters Local 995, whose collective-bargaining agreement with Respondent had expired in 1995 and which engaged in successor agreement negotiations with Respondent prior to the three charging party labor organizations, specifically denied, during the negotiations, ever being told that any agreement had to be ratified by Respondent's headquarters in Boston—such was ''never discussed.'' Rather, according to Burrus, during the parties' initial bargaining session, Bill Champion discussed his authority to negotiate[12] and said, ''[T]he whole contract would have to be approved by Waltzman,'' and, later in the bargaining, Waltzman confirmed what Champion stated, saying, ''if he approved that it would be that way.'' During cross-examination, Burrus was unable to recall Waltzman saying that he had to get approval of the negotiated financial package from his principal, Sheldon Adelson. On being confronted with a contrary statement in his pretrial affidavit, Burrus insisted that he continued to be unable to recall Waltzman making such a comment.[13]

2. Respondent's refusal to provide information

As discussed above, Respondent gave no indication to any of the labor organizations, with which it was engaged in bargaining during 1995, that it had any intent of ceasing operations. To the contrary, in connection with the new recognition clause language and the accompanying side letter, both of which it proposed to the labor organizations, Respondent explained that it was exploring various options for expansion of its facility. However, in the spring of 1996, Jerry Kmetz of the Painters Union and Bill Hutchinson of the Carpenters Union each became aware of media reports that Respondent was considering closing its hotel and casino and received reports of rumors of such from his bargaining unit members, employed by Respondent. Then, on or about May 15, each received a letter from Arthur Waltzman, stating that, pursuant to relevant sections of the Worker Adjustment and Retraining Notification Act, Respondent ''plans to initiate [either a] 'plant closing' and/or a 'mass lay-off.''' Shortly thereafter, each received a letter from Respondent's attorney, Howard Cole, stating that Respondent recognized its ''obligation to meet and confer with [each labor organization] regarding the effects of the closure of the Sands'' and that ''meeting as quickly as possible will best serve the interests of the affected employees.''[14]

Both the Painters Union and the Carpenters Union were represented by the same attorney, Hope Singer, and Kmetz

[12] Burrus testified that Champion commented as follows at the opening bargaining session—''Mr. Champion stated that Mr. Waltzman . . . would handle all of the monetary aspects of the collective bargaining and that he would handle all of the language issues of the contract.''

[13] Burrus' testimony was uncontroverted that Respondent implemented the terms of the successor collective-bargaining agreement, including paying retroactive pay increases to the two bargaining units represented by the Teamsters Union. Inasmuch as such was not done in regard to Respondent's electricians, painters, or carpenters, the assumption appears warranted that what was negotiated at the table, by Waltzman and Champion, was, in fact, a final agreement.

[14] Kmetz testified that, at this time, he became aware that Respondent had offered a severance package to the Culinary Workers Union for its bargaining unit employees.

and Hutchinson each spoke to her, regarding Respondent's cessation of business and its offer to bargain over the effects of the asserted closure. According to Hutchinson, he expressed concerns to Singer, especially ''some skepticism that I had . . . that [the hotel and casino] would be closed completely down. They had just done a . . . remodel of the casino. It seemed rather inappropriate. I thought they would . . . tear down hotel buildings . . . expand . . . towards the street.'' He added that, in discussing the matter with Singer, ''we decided that we didn't have enough information to make the decisions what we had to make.'' Thereafter, on behalf of both labor organizations, Singer arranged a meeting with Cole and sent him a letter, dated May 24, 1966, requesting information, including the following documents:[15]

> 1. Any studies, surveys or reports that formed the basis for the decision to tear down the current property, rather than to build additional towers; 2. Any other internal records, memoranda or communications which relate to the decision to tear down the property or to justify that decision; 3. Any copies of minutes or records of any pertinent meetings at which the tear down and rebuilding of the property was discussed and any written communications announcing the results of those discussions . . . .

Singer, Kmetz, and Hutchinson met with Cole on June 3 in the latter's office,[16] and Cole presented a letter, dated June 2, to the others. The letter represented Respondent's response to Singer's above-described information request, and, at its outset, Cole set forth his authorization to discuss the impact of Respondent's ''closure decision.'' Continuing, Cole described his client's actions as a ''significant change'' in the direction of its business operations and denied that such was merely a temporary closing of the property. Then, in the letter, specifically as to each numbered request for information, Cole demanded that Singer, presumably on behalf of each labor organization, ''furnish valid and compelling reasons justifying the need for this information for purposes of bargaining over the effects of the closure decision.'' He added that the information sought constituted ''confidential and/or proprietary information.''

As to what was said during the meeting regarding the two labor organizations' information request, according to Hutchinson, Cole refused to provide the information, saying he would only do so if such was specifically relevant to bargaining over ''the effects of the closing.'' Singer had no response to Cole's demand for ''compelling'' justification for the information request, replying only that the labor organizations remained ''skeptical'' of Respondent's intent to close ''wholly and completely.'' There is no dispute that, at no time after the conclusion of this meeting,[17] has Respondent ever provided the requested information to the two labor organizations.

As to the relevance and necessity for the requested information, Hutchinson candidly conceded that, other than his belief that Respondent was dissembling in its claim that the cessation of its operations was permanent, he had no other reason for demanding the information, which Singer sought in her May 24 letter to Cole. He added that his labor organization's concern was that the closure was merely temporary ''while they demolish the hotel rooms, so they wouldn't be endangering their clients and reopen the casino that would be temporary.'' Then, ''we would have bargained away our agreement.'' Asked if what Cole wrote and stated during the June 3 meeting had any effect upon his labor organization's need for the information, Hutchinson replied, ''If the hotel was going to rise from the dust, be rebuilt, would we have a continuing agreement? . . . . Did they really and truly intend to tear the hotel building down? . . . . I didn't know for sure that they were really going [to]. All I had was Mr. Cole's word.''[18]

B. *Legal Analysis*

Initially, I turn to consideration of the allegations that Respondent engaged in conduct, violative of Section 8(a)(1) and (5) of the Act by failing and refusing to execute the 1995 Carpenters Union MOA, the 1995 Painters Union MOA, and the 1995 Electrical Workers MOA. The record establishes, and there is no dispute, that, in 1995, on behalf of Respondent, Bill Champion and Arthur Waltzman negotiated complete successor collective-bargaining agreements with each labor organization; therefore, the only issue is whether Champion or Waltzman communicated to each labor organization that, prior to becoming binding upon Respondent, their agreement was subject to approval by Respondent's attorneys and corporate officers, including Sheldon Adelson, in its Boston office. At the outset, I must determine what, in anything, was said, on this subject, by Champion and/or Waltzman during each negotiation, and, in this regard, resolution of the credibility of the several witnesses is required. Bluntly put, I place no reliance on the testimony of Bill Champion that, as part of his opening ''litany'' to each labor organization, he informed them that Waltzman was required to have anything offered by him approved by Interface.

[15] In the letter, Singer noted her clients' belief that, rather than a permanent closure, Respondent was actually undertaking a ''temporary closing of the Sands Hotel.''

[16] Kmetz testified that he was aware he would receive an offer of a severance package from Cole and that, in essence, he would be asked to trade the final 2 years of the term of the successor collective-bargaining agreement (4 years) for a severance payment to each bargaining unit employee. Stating that he was ''pretty confident'' that Respondent desired to construct a new facility, his concern was ''to not have a collective-bargaining agreement when the Sands open[s] a new property and not have the ability to go back into that property. That was my greatest concern. It wasn't a fair trade off.''

Likewise, Hutchinson was aware that he would receive such a proposal.

[17] With regard to the effects bargaining, Cole made a proposal to settle the effects bargaining, offering that Respondent would execute both the Painters Union and the Carpenters Union successor collective-bargaining agreements, pay all the retroactive wage increases owed to both labor organizations' respective bargaining unit employees, who were employed by Respondent, and permit the employees in both bargaining units to participate in its severance payment package in exchange for each labor organization's agreement to change the term of its successor collective-bargaining agreement from 4 years to 2 years.

[18] Hutchinson believed that, notwithstanding the new, agreed-on recognition clause language, there was a chance that the Carpenters would retain bargaining rights if Respondent, itself or in conjunction with others, constructed a new hotel and casino on Respondent's property during the 4-year term of the agreement—''I think that would be open to interpretation by an arbitrator.''

Thus, not only did Champion's answers to questions on this point fail to impress me[19] but also no other witnesses, including Marcie Yarnell and Brian Reive, the only ostensibly corroborative witnesses, substantiated him that he said anything, at the start of bargaining, as to his or Waltzman's authority to bind Respondent.[20]

On the other hand, while I believe that he also said nothing about the necessity for approval of the negotiated agreement from Boston at the close of bargaining with representatives of any of the three Charging Party labor organizations, I also believe that Bill Champion did, in fact, say something about sending their completed agreements to Boston to both Painters Union and Carpenters Union representatives at the conclusion of their respective negotiations. In this regard, as Marcie Yarnell's testimonial demeanor appeared to be that of a mere sycophantic witness, one whose testimony was intended to buttress Respondent's position rather than to be truthful, I place no reliance on her version of what Champion said at the close of bargaining with the Charging Party labor organizations. Also, in contrast to that of Dalton Hooks, James Springgate, Jerry Kmetz, Bill Hutchinson, and Aubrey Rueff, Bill Champion's demeanor, while testifying, was that of an utterly disingenuous witness; therefore, while confident in the respective candor of Hooks, Springgate, Kmetz, Hutchinson, and Rueff, I place only slight reliance upon the testimony of Champion as to what, if anything, he said to the various labor organizations at the close of 1995 bargaining.[21] Further, Dennis Kist, the acting president of the Stage Hands Union, and Brian Reive, the Operating Engineers Union business representative, each impressed me as being a candid witness, and the testimony of each is worthy of belief. While the foregoing credibility resolutions result in a nominal inconsistency—that, at the conclusion of bargaining, Respondent informed the representatives of the Operating Engineers Union that their agreed-on successor agreement required approval by Respondent's corporate officials in Boston prior to becoming binding,[22] mentioned something concerning attorney review to representatives of the Carpenters Union, but said not a word on these points, to the negotiators for other labor organizations, such, in my view, merely establishes that those, who negotiated on behalf of Respondent, including Champion, were, in fact, inconsistent in what they said to each labor organization, regarding restrictions on their bargaining authority, during 1995 negotiations. Put another way, what Respondent's negotiators may have said, regarding their bargaining authority, to one labor organization does not establish that the same, or any, message was conveyed to any other labor organization, with whom Respondent bargained in that year. Therefore, I find that, during bargaining in 1995, while Champion and Waltzman informed the Operating Engineer's representatives and, perhaps, those representing the Teamsters Union that the parties' negotiated agreement was tentative, subject to approval by Respondent's corporate officials, Respondent's bargaining representatives never informed negotiators for either the Electrical Workers Union, the Painters Union, the Carpenters Union, or the Stage Hands Union of the existence of such a condition subsequent and that, at most, Bill Champion informed representatives of the Carpenters Union that their completed MOA would be sent to Boston for signing and informed representatives of the Carpenters Union that their fully consummated MOA would be ''run'' past Respondent's attorneys in Boston or sent to them for ''a check over wording.''[23]

There is no dispute as to the applicable Board law. Thus, having reached agreement on the terms of a complete collective-bargaining agreement, it is incumbent on a party to an agreement, on the request of the other party, to execute a memorialized version of the agreement, and a failure and refusal to do so constitutes a violation of Section 8(a)(1) and (5) of the Act. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). Further, ''a per se violation of [the Act] may occur when a company misleads [a labor organization] into believing that an agreement has been reached . . . and only formal execution remains.'' *NLRB v. Advanced Business Forms Corp*., 474 F.2d 457, 465 (2d Cir. 1973). In this regard, ''the law is clear that when an agent is appointed to negotiate a collective-bargaining agreement that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary.'' *University of Bridgeport*, 229

[19] For example, at one point, when asked if anything was said by Waltzman or him concerning their authority to reach an agreement, Champion said, ''No. The answer is no. I could see that it was obvious that we didn't.'' Given an opportunity to correct his answer, the witness corrected himself. I have no confidence in the veracity of this later response.

[20] Assuming arguendo that Champion did, in fact, state what he asserted he said at the start of each set of negotiations, I am not at all certain such would have been understood as meaning that any ''final'' agreement, reached at the bargaining table, required approval by Respondent's corporate officers in Boston. Thus, what Champion said may well have been understood as meaning that any offers or agreements at the table required immediate approval by the officials. This view is supported by Champion's own comment that Waltzman reported to him that he kept Boston fully appraised as to the ongoing bargaining and by R. Exhs. 3 and 4, which are solicitations of Adelson's approval of bargaining positions.

I do not view Aubrey Rueff's vague recollection, that, at the first 1995 bargaining session between the Carpenters Union, the Painters Union, and Respondent, Champion said, ''[T]here was no final authority either way . . .,'' as being corroborative of the latter's testimony. Thus, Rueff candidly conceded that he could not recall what, in fact, was said, and his testimony is demonstrative of a witness, who was having trouble recalling a past comment. Further, he specifically denied that Champion ever said the parties' agreement required approval elsewhere by anyone else.

[21] I note that, as Champion's version of what he said is similar to the recollection of Aubrey Rueff, it is not inconceivable that, at the conclusion of the bargaining with the Carpenters Union, his words were ''They had to run it by the attorneys in Boston.''

[22] While such was at variance with his testimony and notwithstanding his inability to recall making such a statement, inasmuch as Steve Burrus, the secretary/treasurer of the Teamsters Union, wrote, in his sworn pretrial affidavit, that Waltzman commented about having to check with his principals when the parties neared a final agreement, it is not unlikely that Waltzman also made such a statement to the Teamsters Union during the 1995 negotiations.

[23] I credit the testimony of Hutchinson that his understanding of such a statement is that ''the attorneys always review [an agreement] to make sure that I'm not going put something in there that wasn't agreed [to].'' In other words, ''review it for accuracy.'' Based on what Waltzman reported to Champion, inasmuch as Respondent's corporate officers and attorneys were constantly updated on negotiations and, undoubtedly, approved whatever was being offered to the labor organizations, an examination for form would have been the only reason Respondent's corporate officers and attorneys would have reviewed the agreements at issue herein.

NLRB 1074, 1074 (1977); *Metco Products, Inc. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989); *Hyatt Regency New Orleans*, 281 NLRB 279, 282 (1986); *Adams Iron Works, Inc*., 221 NLRB 71 (1975); *Aptos Seascape Corp*., 194 NLRB 540, 544 (1971). Herein, I have concluded that, at no point during the 1995 successor contract negotiations with the Electrical Workers Union, the Painters Union or the Carpenters Union, did either Arthur Waltzman or Bill Champion inform representatives of either labor organization that the parties' consummated collective-bargaining agreement was tentative and not binding on Respondent until approved by corporate officials or attorneys in Boston. Accordingly, after Waltzman and Dalton Hooks shook hands at the conclusion of bargaining and the former stated they had a deal, the Electrical Workers Union bargaining unit employees ratified the completed MOA, and Hooks executed and returned a copy to Respondent for signature, the latter was obligated to execute the document and abide by its terms. Likewise, after the parties concluded bargaining and Champion instructed Jerry Kmetz to take the agreement to the bargaining unit employees for ratification, the Painters Union bargaining unit employees ratified the MOA, and Kmetz brought an executed copy of the MOA to Respondent for signature, the latter was obligated to execute the MOA and abide by its terms. Also, after Waltzman told Hutchinson that Respondent and the Carpenters Union had previously reached a deal and to sell the MOA to the bargaining unit employees, the employees ratified the agreement, and Hutchinson delivered an executed copy to Respondent, the latter was obligated to execute that labor organization's MOA and abide by its terms.

Finally, with regard to whatever Champion said to representatives of both the Painters Union and the Carpenters Union at the conclusion of their respective negotiations, I do not believe that such was sufficient to place either labor organization on notice that substantive approval of their respective memorandum agreements, by its corporate officials and attorneys in Boston, was required before these would become binding on Respondent. Thus, ''if the necessity for [an] employer's approval of an agreement made by [its] agent is not clearly understood, the employer's refusal to sign the agreement is unlawful.'' *Aptos Seascape*, supra. In my view, it would be nonsensical to assert that informing the Painters Union that their completed MOA would be executed in Boston constituted clear notice that substantive approval of the document was required before it became binding. Likewise, inasmuch as, Bill Hutchinson understood that, after negotiations for a collective-bargaining agreement, it was not unusual for the parties' lawyers to review the memorialized version of the agreement for accuracy, it would be unreasonable to conclude that Champion's comment, at the conclusion of the 1995 bargaining, clearly conveyed to Hutchinson and Aubrey Rueff that, in order for the agreed-on MOA to become binding on Respondent, substantive approval of the terms, by Respondent's attorneys in Boston, was necessary. Therefore, by failing and refusing to execute each of the above memorandum agreements and by failing and refusing to abide by the terms of each agreement, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act. *H. J. Heinz Co*., supra; *University of Bridgeport*, supra.

I turn now to analysis as to whether Respondent engaged in conduct, violative of Section 8(a)(1) and (5) of the Act, by failing and refusing to transmit to the Carpenters Union and the Painters Union certain documents pertaining to Respondent's asserted permanent cessation of operations, requested in a letter, dated May 24, 1996, from the labor organizations' attorney to counsel for Respondent. In this regard, there is no dispute that, rather than providing the requested information, Respondent's attorney responded by demanding that the labor organizations furnish Respondent with ''valid and compelling reasons justifying'' each request and that, when counsel for the labor organizations failed to do so, Respondent refused to transmit the requested information to the labor organizations on grounds that the latter had failed to establish the relevancy of the information to effects bargaining. The parties agree on the relevant legal principals. Thus, it has long been established Board law that, generally, an employer is under a statutory obligation, on request, to provide a labor organization, which is the collective-bargaining representative of the employer's employees, with information, which is necessary and relevant for the proper performance of the labor organization's duties in representing the bargaining unit employees. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956); *Aerospace Corp*., 314 NLRB 100, 103 (1994); *Howard University*, 290 NLRB 1006 (1988). This duty to provide information encompasses not only material necessary and relevant for the purpose of contract negotiations but also information necessary for the administration of a collective-bargaining agreement, including information required by a labor organization to process a grievance, and for effects bargaining. *Acme Industrial*, supra; *Bacardi Corp*., 296 NLRB 1220 (1989); *Challenge-Cook Bros*., 282 NLRB 21, 28 (1986). The standard for relevancy is a ''liberal discovery-type standard,'' and the sought-after evidence need not be necessarily dispositive of the issue between the parties but, rather, only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. *Aerospace Corp*., supra; *Bacardi Corp*., supra; *Pfizer, Inc*., 268 NLRB 916 (1984). Further, necessity is not a guideline itself but, rather, is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. *Bacardi Corp*., supra. Moreover, information, which concerns the terms and conditions of employment of the bargaining unit employees, is deemed ''so intrinsic to the core of the employer-employee relationship'' that such is held to be presumptively relevant. *York International Corp*., 290 NLRB 438 (1988), quoting *Southwestern Bell Telephone Co*., 173 NLRB 172 (1968); *Buffalo Concrete*, 276 NLRB 839 (1985). However, information, which does not concern the terms and conditions of bargaining unit employees, is not presumptively relevant, and the labor organization ''must therefore demonstrate the relevance of such information.'' *Maple View Manor, Inc*., 320 NLRB 1149, 1151 at fn. 2 (1996); *Miami Rivet of Puerto Rico*, 318 NLRB 769 (1995). ''A [labor organization] has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information.'' *Shoppers Food Warehouse*, 315 NLRB 358, 359 (1994); *Knappton Maritime Corp*., 292 NLRB 236 (1988).

Counsel for the General Counsel does not contend that the information, which was requested by the attorney for the Painters Union and the Carpenters Union, is presumptively relevant. Rather, he recognizes that it is necessary for the

labor organizations to establish the relevancy of their requested information and argues that they have met their burden. In this regard, as I understand the respective testimony of Jerry Kmetz and of Bill Hutchinson, both of whom I credit, each was aware that Howard Cole would propose a bargaining unit employee severance package, to each labor organization, contingent upon each agreeing to reduce the term of its successor collective-bargaining agreement from 4 to 2 years, and, as, notwithstanding Respondent's attorney's protestations to the contrary, neither Kmetz nor Hutchinson believed that Respondent's actual intent was to permanently close its hotel and casino facility and as each was leery of relinquishing his labor organization's bargaining rights for 1998 and 1999, Kmetz and Hutchinson required the requested documents, concerning Respondent's future plans, in order to determine whether or not to engage in bargaining over the severance offers. Given that Waltzman and Champion had recently engaged in extensive discussion of Respondent's expansion plans for its facility during the successor contract bargaining with them, there appears to have existed an objective basis for Kmetz's and Hutchinson's expressed skepticism.

Nevertheless, contending that his client lawfully refused to furnish the requested information to the Painters Union and to the Carpenters Union, counsel for Respondent argues that the documents, which the labor organizations requested, pertain to Respondent's decision to cease business operations, a matter about which it was not entitled to bargain, and were not concerned with, or relevant to, the effects bargaining[24] itself, and Hutchinson himself admitted that, other than his belief that Respondent was not, in fact, closing the business, there were no other reasons underlying the document requests. In this regard, the Board concluded, in *BC Industries*, 307 NLRB 1275, 1275 at fn. 2 (1992), that an employer did not violate Section 8(a)(1) and (5) of the Act by refusing to bargain over a decision to close two plants and to relocate one, and, clearly, as the Board held in *Challenge-Cook Bros*., supra, a labor organization is not entitled to information pertaining to a subject about which it is not entitled to bargain.[25] Arguing the relevancy of the requested documents, counsel for the General Counsel points out that the information was required by the labor organizations in order for them to weigh the efficacy of entering into effects bargaining with Respondent and relies upon two Board decisions for support. In *Metro Foods*, 289 NLRB 1107 (1988), which involved the alleged establishment of an alter ego company, a union requested information about the new business.[26] The respondent contended that the union, which represented certain of its employees, was demanding information pertaining to its decision to close its business, a subject on which the union was not entitled to bargain. The Board concluded that the union was entitled to any information concerning ''whether [the business] was in fact closing or whether the business was continuing through a successor or alter ego.'' Id. at 1118. Counsel also relies on *Shoppers Food Warehouse*, supra, in which a union requested information, pertaining to whether a new store was of the type covered by the parties existing collective-bargaining agreement, from an employer. The latter informed the union the new store was not of the type covered by the contract. The Board concluded that the union was entitled to the information as ''the Union was not required to accept the Respondent's response that [the new store] was a totally separate operation and not a food store within the meaning of the contract'' and was entitled to conduct its own investigation to reach its own conclusions. Id. at 259.

I find merit to the arguments of both counsel for the General Counsel and counsel for Respondent. Thus, there can be no question that a labor organization is not entitled to bargain over an employer's decision to close a plant or that a labor organization is not entitled to documents relating to such a decision. However, in *Metro Foods*, supra, the involved labor organization avoided such a result and established the relevancy of its questions to the alleged establishment of an alter ego company as, rather than inquiring as to the decision to close the business itself, it probed the bona fide nature of the employer's claimed business closure decision with questions regarding its implementation. Herein, while Hutchinson asserted that the labor organizations' concern was whether, in fact, Respondent's business closure was complete and permanent, examination of their attorney's three document requests reveals that, except for a portion of the third, unlike the questions in *Metro Foods* and rather than relating to Respondent's implementation of its asserted cessation of operations decision, the requested documents directly concerned the decision, a subject about which Respondent was under no obligation to bargain, and Respondent was, therefore, under no statutory obligation to provide the documents to the labor organizations. However, I think that, to the extent that the third document request sought minutes or records of meetings during which the possible rebuilding of Respondent's facility was discussed and any written communications announcing such, said request did, in fact, relate to the permanence and entirety of the closure and not to the closure decision itself and should have been provided to the labor organizations in order for them to determine whether to engage in effects bargaining. This information was clearly necessary and relevant to the labor organizations' decision as, based on objective factors, including Respondent's statements at the bargaining table, Hutchinson and Kmetz could reasonably have doubted the veracity of Waltzman's and Cole's statements that Respondent was permanently and completely closing its business, and, notwithstanding counsel for Respondent's posthearing brief contention to the contrary, it is, in fact, Board law that the labor organizations were not required to accept their assertions. *Shoppers Food Ware-*

[24] ''So-called effects bargaining provides the union with an opportunity to bargain in the employees' interest for such benefits as severance pay, payments into the pension fund, preferential hiring if the employer continues operating at other plants, and reference letters . . . .'' *Los Angeles Soap Co*., 300 NLRB 289, 295 (1990).

[25] While in *Challenge-Cook Bros*., supra, the Board did order the respondent to provide the union with information relevant to effects bargaining and while the information request was for documents, similar to those requested herein, the Board's order differentiated between documents, which related to the respondent's decision to relocate its operations and which the respondent was not ordered to give to the union, and documents, which were clearly relevant for effects bargaining.

[26] The information requests were a series of questions pertaining not to the decision to close but to the actual closure itself—had the company, as yet, sold its goodwill, its property, its business accounts, its office equipment, etc.

house, supra. Accordingly, to this limited extent, I find that Respondent engaged in conduct, violative of Section 8(a)(1) and (5) of the Act by not providing the requested documents to the Painters Union and the Carpenters Union. *Metro Foods*, supra.[27]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Electrical Workers Union, the Painters Union, and the Carpenters Union are, and each is, labor organizations within the meaning of Section 2(5) of the Act.

3. The Painters Union is the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All painters, paperhangers, taper-finishers, and combination craftsmen employed by Respondent; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

4. The Electrical Workers Union is the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All electrician foremen, journeymen electricians, and relief electricians employed by Respondent; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

5. The Carpenters Union is the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All journeymen carpenters and carpenter foremen employed by Respondent; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

6. By failing and refusing to execute the memorandum of agreement between itself and the Electrical Workers Union, embodying the terms of their successor collective-bargaining agreement, covering the bargaining unit employees described in paragraph 4 above, reached on or about September 11, 1995, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

7. By failing and refusing to execute the memorandum of agreement between itself and the Painters Union, embodying the terms of their successor collective-bargaining agreement, covering the bargaining unit employees described in paragraph 3 above, reached on or about October 23, 1995, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

8. By failing and refusing to execute the memorandum of agreement between itself and the Carpenters Union, embodying the terms of the successor collective-bargaining agreement, covering the bargaining unit employees described in paragraph 5 above, reached in or about November 1995, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

9. By failing and refusing to furnish the Painters Union and the Carpenters Union with the requested documents, relating to the records and minutes of any meetings during which the future rebuilding of Respondent's hotel and casino facility was discussed and to any printed announcements of such, documents which were necessary and relevant to each labor organizations for their considerations as to whether to engage in effects bargaining with it, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

10. The above violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

11. Unless stated above, Respondent engaged in no other unfair labor practices.

THE REMEDY

Having found that Respondent has engaged in serious violations of Section 8(a)(1) and (5) of the Act, I shall order it to cease and desist from engaging in the conduct, which I have found unlawful, and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to execute the above-described memorandum of agreement between itself the Electrical Workers Union, the memorandum of agreement between itself and the Painters Union, and the memorandum of agreement between itself and the Carpenters Union. In addition, I shall recommend that, upon execution of each memorandum of agreement, Respondent give retroactive effect to its provisions and make whole the bargaining unit employees, with interest, for any losses they may have suffered by reason of Respondent's failure to execute and effectuate all terms of the agreement, including retroactive wage increases. Backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 1173 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, I shall recommend that Respondent shall pay, to any contractually agreed-on trust funds, the amounts of any increased contributions that Respondent failed to make on behalf of the bargaining unit employees in accordance with the Board's decision in *Fox Painting Co*., 263 NLRB 437 (1982), with any additional amount to be computed in accordance with the Board's decision in *Merryweather Optical Co*., 240 NLRB 1213 (1979). I shall also recommend that Respondent reimburse its employees for any expenses resulting from any failure to make fund payments in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

With regard to Respondent's unlawful failure and refusal to provide necessary and relevant information to the Carpenters Union and to the Painters Union for purposes of determining whether to engage in effects bargaining, I do not

[27] Counsel for Respondent argues that what was requested by the labor organization' counsel constituted proprietary and confidential information. An employer bears the burden of demonstrating that its refusal to provide relevant and necessary information to a labor organization is excusable because the requested information is somehow privileged. *Aerospace Corp*., supra at 103 fn. 10; *McDonnell Douglas Corp*., 224 NLRB 881 (1976). Respondent offered no evidence to support this defense, and, thus, it is without merit.

believe that it would effectuate the policies of the Act to order Respondent to furnish the requested documents to the two labor organizations at this time. Thus, there is no dispute that, notwithstanding the labor organizations' reasonable belief to the contrary, Respondent did, in fact, cease all business operations on or about June 30, 1996, and that its hotel and casino facility was torn down shortly thereafter. Accordingly, the requested documents could serve no useful purpose to either labor organization and to order Respondent to provide such would be, at most, a classic Pyrrhic victory.

On these findings of fact and conclusions of law and on the entire record herein, I issue the following recommended[28]

ORDER

The Respondent, Las Vegas Sands, Inc., d/b/a Sands Hotel & Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute the memorandum of agreement, memorializing the terms of the 1995 successor collective-bargaining agreement reached by it and the Electrical Workers Union.

(b) Failing and refusing to execute the memorandum of agreement, memorializing the terms of the 1995 successor collective-bargaining agreement reached by it and the Painters Union.

(c) Failing and refusing to execute the memorandum of agreement, memorializing the terms of 1995 successor collective-bargaining agreement reached by it and the Carpenters Union.

(d) Failing and refusing to furnish the Painters Union and the Carpenters Union with documents, relating to the records and minutes of any meetings during which the future rebuilding of Respondent's hotel and casino facility was discussed and to any printed announcements of such.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Forthwith execute the memorandum of agreement, embodying the terms of the successor collective-bargaining agreement, between it and the Electrical Workers Union, reached on or about September 11, 1995.

(b) Forthwith execute the memorandum of agreement, embodying the terms of the successor collective-bargaining agreement, between it and the Painters Union, reached on or about October 23, 1995.

(c) Forthwith execute the memorandum of agreement, embodying the terms of the successor collective-bargaining agreement, between it and the Carpenters Union, reached in or about November 1995.

(d) On execution of each of the aforesaid agreements, give retroactive effect to its provisions and make whole the bargaining unit employees, with interest, for any losses they may have suffered by means of Respondent's failure to execute and effectuate all the terms of the agreement, including the payment of retroactive wage increases, in the manner set forth in the remedy section of this decision. In addition, Respondent shall pay to any contractually agreed-on trust funds the amounts of any increased contributions, which Respondent failed to make, in the manner set forth in the remedy section of this decision. Further Respondent shall reimburse any bargaining unit employees, with interest, for any expenses resulting from its failure to make any trust fund payments in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense, copies of the attached notice, marked ''Appendix,''[29] in Spanish and English, to all employees of its Las Vegas, Nevada hotel and casino facility, who were employed by it between August 31, 1995, and the closure of the facility on June 30, 1996. Copies of the notice, on forms provided by the Regional Director for Region 20, shall bear the signature of the Respondent's authorized representative.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

[28] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[29] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by the terms of this notice.

WE WILL NOT refuse to execute the memorandum of agreement, memorializing the terms of the 1995 successor collective-bargaining agreement, between International Brotherhood of Electrical Workers, Local 357, AFL–CIO and us.

WE WILL NOT refuse to execute the memorandum of agreement, memorializing the terms of the 1995 successor collective-bargaining agreement, between International Brotherhood of Painters & Allied Trades Union, Local 159, AFL–CIO and us.

WE WILL NOT refuse to execute the memorandum of agreement, memorializing the terms of the 1995 successor collective-bargaining agreement, between Silver State District Council of Carpenters & Joiners of America, Local 1780, AFL–CIO and us.

WE WILL NOT refuse to furnish to the Painters Union and to the Carpenters Union documents, relating to the records

and minutes of any meetings during which the future rebuilding of our hotel and casino facility was discussed and to any printed announcements of such.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL forthwith execute the memorandum of agreement, embodying the terms of the successor collective-bargaining agreement between the Electrical Workers Union and us.

WE WILL forthwith execute the memorandum of agreement, embodying the terms of the successor collective-bargaining agreement between the Painters Union and us.

WE WILL forthwith execute the memorandum agreement, embodying the terms of the successor collective-bargaining agreement, embodying the terms of the successor collective-bargaining agreement between the Carpenters Union and us.

WE WILL give retroactive effect to the terms and conditions of employment of each of the above agreements and WE WILL make whole our employees for any losses they may have suffered by reason of our failure to execute the above agreements, with interest.

WE WILL reimburse any contractual trust funds for any contributions we failed to make or for any increases in payments we failed to make, with interest.

LAS VEGAS SANDS, INC., D/B/A SANDS HOTEL AND CASINO